



April 6, 2005

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## ENGROSSED HOUSE BILL No. 1097

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DIGEST OF HB 1097 (Updated April 5, 2005 12:45 pm - DI 44)

**Citations Affected:** IC 6-1.1; IC 13-21; IC 20-26; noncode.

**Synopsis:** Local finance matters. Requires rules of the department of local government finance to include instructions for: (1) determining the true tax value of certain mobile homes in a prescribed manner; and (2) determining the true tax value at the time of acquisition of computer application software for the purpose of deducting that value from the true tax value of taxable personal property. Requires the controller of a solid waste management district to deposit and invest the district's money in the same manner that other county money is deposited and invested. Allows a school corporation to form a foundation to hold grants, gifts, and certain other money received by the school corporation.

**Effective:** July 1, 2005; January 1, 2006.

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**Borrer, Mays**

(SENATE SPONSOR — FORD)

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January 6, 2005, read first time and referred to Committee on Ways and Means.  
January 13, 2005, amended, reported — Do Pass.  
January 24, 2005, read second time, amended, ordered engrossed.  
January 25, 2005, engrossed. Read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 14, 2005, read first time and referred to Committee on Tax and Fiscal Policy.  
April 5, 2005, amended, reported favorably — Do Pass.

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EH 1097—LS 6557/DI 52+



April 6, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1097

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A BILL FOR AN ACT to amend the Indiana Code concerning  
taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-1.1-1-11 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 11. (a) Subject to  
3 the limitation contained in subsection (b), "personal property" means:  
4 (1) nursery stock that has been severed from the ground;  
5 (2) florists' stock of growing crops which are ready for sale as pot  
6 plants on benches;  
7 (3) billboards and other advertising devices which are located on  
8 real property that is not owned by the owner of the devices;  
9 (4) motor vehicles, mobile houses, airplanes, boats not subject to  
10 the boat excise tax under IC 6-6-11, and trailers not subject to the  
11 trailer tax under IC 6-6-5;  
12 (5) foundations (other than foundations which support a building  
13 or structure) on which machinery or equipment is installed; and  
14 (6) all other tangible property (other than real property) which is  
15 being:  
16 (A) held for sale in the ordinary course of a trade or business;  
17 (B) held, used, or consumed in connection with the production

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1 of income; or

2 (C) held as an investment.

3 (b) Personal property does not include **the following:**

4 (1) Commercially planted and growing crops while they are in the  
5 ground.

6 (2) **Computer application software that is not held as**  
7 **inventory (as defined in IC 6-1.1-3-11).**

8 SECTION 2. IC 6-1.1-31-7 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 7. (a) With  
10 respect to the assessment of personal property, the rules of the  
11 department of local government finance shall provide for the  
12 classification of personal property on the basis of:

13 (1) date of purchase;

14 (2) location;

15 (3) use;

16 (4) depreciation, obsolescence, and condition; and

17 (5) any other factor that the department determines by rule is just  
18 and proper.

19 (b) With respect to the assessment of personal property, the rules of  
20 the department of local government finance shall include instructions  
21 for determining:

22 (1) the proper classification of personal property;

23 (2) the effect that location has on the value of personal property;

24 (3) the cost of reproducing personal property;

25 (4) the depreciation, including physical deterioration and  
26 obsolescence, of personal property;

27 (5) the productivity or earning capacity of mobile homes regularly  
28 used to rent or otherwise furnish residential accommodations for  
29 periods of thirty (30) days or more;

30 (6) **the true tax value of mobile homes assessed under**  
31 **IC 6-1.1-7 (other than mobile homes subject to the preferred**  
32 **valuation method under IC 6-1.1-4-39(b)) as the least of the**  
33 **values determined using the following:**

34 (A) The National Automobile Dealers Association Guide.

35 (B) The purchase price of a mobile home if:

36 (i) the sale is of a commercial enterprise nature; and

37 (ii) the buyer and seller are not related by blood or  
38 marriage.

39 (C) Sales data for generally comparable mobile homes; and

40 (7) **the true tax value at the time of acquisition of computer**  
41 **application software, for the purpose of deducting the value**  
42 **of computer application software from the acquisition cost of**

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1 **tangible personal property whenever the value of the tangible**  
 2 **personal property that is recorded on the taxpayer's books**  
 3 **and records reflects the value of the computer application**  
 4 **software; and**

5 ~~(7)~~ **(8)** the true tax value of personal property based on the factors  
 6 listed in this subsection and any other factor that the department  
 7 determines by rule is just and proper.

8 (c) In providing for the classification of personal property and the  
 9 instructions for determining the items listed in subsection (b), the  
 10 department of local government finance shall not include the value of  
 11 land as a cost of producing tangible personal property subject to  
 12 assessment.

13 (d) With respect to the assessment of personal property, true tax  
 14 value does not mean fair market value. Subject to this article, true tax  
 15 value is the value determined under rules of the department of local  
 16 government finance.

17 SECTION 3. IC 13-21-3-10 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A controller  
 19 selected under section 9 of this chapter shall do the following:

20 (1) Be the official custodian of all district money **and, subject to**  
 21 **the terms of any resolution or trust indenture under which**  
 22 **bonds are issued under this article, deposit and invest all**  
 23 **district money in the same manner as other county money is**  
 24 **deposited and invested under IC 5-13.**

25 (2) Be responsible to the board for the fiscal management of the  
 26 district.

27 (3) Be responsible for the proper safeguarding and accounting of  
 28 the district's money.

29 (4) Subject to subsection (c), issue warrants approved by the  
 30 board after a properly itemized and verified claim has been  
 31 presented to the board on a claim docket.

32 (5) Make financial reports of district money and present the  
 33 reports to the board for the board's approval.

34 (6) Prepare the district's annual budget.

35 (7) Perform any other duties:

36 (A) prescribed by the board; and

37 (B) consistent with this chapter.

38 (b) A controller selected under section 9 of this chapter:

39 (1) does not exercise any sovereign authority of the state; and

40 (2) does not hold a lucrative office for purposes of Article 2,  
 41 Section 9 of the Constitution of the State of Indiana.

42 (c) The board may, by resolution, authorize the controller to make

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claim payments for:

- (1) payroll;
- (2) the state solid waste management fee imposed by IC 13-20-22-1; and
- (3) certain specific vendors identified in the resolution;

without the claims being first approved by the board if before payment the claims are approved in writing by the chairperson of the board or in the absence of the chairperson another member of the board designated by the chairperson. The claims shall be reviewed and allowed by the board at the board's next regular or special meeting.

SECTION 4. IC 13-21-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A board that has imposed fees under section 1 of this chapter shall establish and continuously maintain a separate fund under this section to be known as the "\_\_\_\_\_ district solid waste management fund".

(b) All fees remitted to the district under section 1 of this chapter shall be deposited in the fund.

(c) Money in the fund may be used only for the following purposes:

- (1) To pay expenses of administering the fund.
- (2) To pay costs associated with the development and implementation of the district plan.

(d) The controller of the district shall administer a fund established under this section. Money in the fund that is not currently needed for the purposes set forth in subsection (c) ~~may~~ **shall be deposited and** invested in the same manner as other county money ~~may be~~ **is deposited and** invested **under IC 5-13**. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a district's fiscal year does not revert to:

- (1) a county general fund; or
- (2) any other fund.

(e) The controller of a district shall:

- (1) file an individual surety bond; or
- (2) revise an existing bond;

in a sufficient amount determined under IC 5-4-1-18 to reflect the liability associated with the handling of the district's money.

SECTION 5. IC 20-26-5-22.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 22.5. (a) A school corporation may participate in the establishment of a public school foundation.**

**(b) The governing body of a school corporation may receive the proceeds of a grant, a restricted gift, an unrestricted gift, a donation, an endowment, a bequest, a trust, an agreement to share**

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1 tax revenue received by a city or county under IC 4-33-12-6 or  
 2 IC 4-33-13, or other funds not generated from taxes levied by the  
 3 school corporation to create a foundation under the following  
 4 conditions:

5 (1) The foundation is:

6 (A) exempt from federal income taxation under Section  
 7 501(c)(3) of the Internal Revenue Code; and

8 (B) organized as an Indiana nonprofit corporation for the  
 9 purposes of providing educational funds for scholarships,  
 10 teacher education, capital programs, and special programs  
 11 for school corporations.

12 (2) Except as provided in subdivision (3), the foundation  
 13 retains all rights to a donation, including investment powers.  
 14 The foundation may hold a donation as a permanent  
 15 endowment.

16 (3) The foundation agrees to do the following:

17 (A) Distribute the income from a donation only to the  
 18 school corporation.

19 (B) Return a donation to the general fund of the school  
 20 corporation if the foundation:

21 (i) loses the foundation's status as a foundation exempt  
 22 from federal income taxation under Section 501(c)(3) of  
 23 the Internal Revenue Code;

24 (ii) is liquidated; or

25 (iii) violates any condition set forth in this subdivision.

26 (c) A school corporation may use the proceeds received under  
 27 this section from a foundation only for purposes of the school  
 28 corporation.

29 (d) The governing body of the school corporation may appoint  
 30 members to the foundation.

31 (e) The treasurer of the governing body of the school  
 32 corporation may serve as the treasurer of the foundation.

33 SECTION 6. [EFFECTIVE JANUARY 1, 2006] IC 6-1.1-1-11 and  
 34 IC 6-1.1-31-7, both as amended by this act, apply only to property  
 35 taxes first due and payable after December 31, 2006.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1097, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 11. (a) Subject to the limitation contained in subsection (b), "personal property" means:

- (1) nursery stock that has been severed from the ground;
- (2) florists' stock of growing crops which are ready for sale as pot plants on benches;
- (3) billboards and other advertising devices which are located on real property that is not owned by the owner of the devices;
- (4) motor vehicles, mobile houses, airplanes, boats not subject to the boat excise tax under IC 6-6-11, and trailers not subject to the trailer tax under IC 6-6-5;
- (5) foundations (other than foundations which support a building or structure) on which machinery or equipment is installed; and
- (6) all other tangible property (other than real property) which is being:
  - (A) held for sale in the ordinary course of a trade or business;
  - (B) held, used, or consumed in connection with the production of income; or
  - (C) held as an investment.

(b) Personal property does not include **the following**:

- (1) Commercially planted and growing crops while they are in the ground.
- (2) **Computer application software.**

Page 2, line 7, after "computer" insert "**application**".

Page 2, line 7, delete ";" and insert ", **for the purpose of deducting the value of computer application software from the acquisition cost of tangible personal property whenever the value of the tangible personal property that is recorded on the taxpayer's books and records reflects the value of the computer application software;**".

Page 2, line 16, delete "Except as provided in subsection (e), with" and insert "With".

Page 2, delete lines 20 through 21.

Page 2, line 22, after "2006]" insert "**IC 6-1.1-1-11 and**".

Page 2 line 22, after "IC 6-1.1-31-7," insert "**both**".

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Page 2, line 23, delete "applies" and insert "**apply**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1097 as introduced.)

ESPICH, Chair

Committee Vote: yeas 24, nays 0.

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#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1097 be amended to read as follows:

Page 2, line 6, delete "." and insert "**that is not held as inventory (as defined in IC 6-1.1-3-11)**".

(Reference is to HB 1097 as printed January 14, 2005.)

BORROR

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#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1097 be amended to read as follows:

Page 2, line 29, delete ";" and insert ",".

Page 2, line 29, after "and" insert "**which must require the use of nationally recognized valuation guides when determining the true tax value of mobile homes assessed under IC 6-1.1-7**";.

(Reference is to HB 1097 as printed January 14, 2005.)

WELCH

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1097, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 30, after "(6)" insert "**the true tax value of mobile**

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homes assessed under IC 6-1.1-7 (other than mobile homes subject to the preferred valuation method under IC 6-1.1-4-39(b)) as the least of the values determined using the following:

(A) The National Automobile Dealers Association Guide.

(B) The purchase price of a mobile home if:

- (i) the sale is of a commercial enterprise nature; and
- (ii) the buyer and seller are not related by blood or marriage.

(C)".

Page 2, line 30, delete "sales" and insert "Sales".

Page 2, line 30, delete "," and insert ";".

Page 2, line 30, delete "which".

Page 2, delete lines 31 through 33.

Page 2, line 34, delete "fair market" and insert "true tax".

Page 2, line 34, after "value" insert "at the time of acquisition".

Page 3, between lines 9 and 10, begin a new paragraph and insert:  
"SECTION 3. IC 13-21-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A controller selected under section 9 of this chapter shall do the following:

(1) Be the official custodian of all district money **and, subject to the terms of any resolution or trust indenture under which bonds are issued under this article, deposit and invest all district money in the same manner as other county money is deposited and invested under IC 5-13.**

(2) Be responsible to the board for the fiscal management of the district.

(3) Be responsible for the proper safeguarding and accounting of the district's money.

(4) Subject to subsection (c), issue warrants approved by the board after a properly itemized and verified claim has been presented to the board on a claim docket.

(5) Make financial reports of district money and present the reports to the board for the board's approval.

(6) Prepare the district's annual budget.

(7) Perform any other duties:

(A) prescribed by the board; and

(B) consistent with this chapter.

(b) A controller selected under section 9 of this chapter:

(1) does not exercise any sovereign authority of the state; and

(2) does not hold a lucrative office for purposes of Article 2, Section 9 of the Constitution of the State of Indiana.

(c) The board may, by resolution, authorize the controller to make

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claim payments for:

- (1) payroll;
- (2) the state solid waste management fee imposed by IC 13-20-22-1; and
- (3) certain specific vendors identified in the resolution;

without the claims being first approved by the board if before payment the claims are approved in writing by the chairperson of the board or in the absence of the chairperson another member of the board designated by the chairperson. The claims shall be reviewed and allowed by the board at the board's next regular or special meeting.

SECTION 4. IC 13-21-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A board that has imposed fees under section 1 of this chapter shall establish and continuously maintain a separate fund under this section to be known as the "\_\_\_\_\_ district solid waste management fund".

(b) All fees remitted to the district under section 1 of this chapter shall be deposited in the fund.

(c) Money in the fund may be used only for the following purposes:

- (1) To pay expenses of administering the fund.
- (2) To pay costs associated with the development and implementation of the district plan.

(d) The controller of the district shall administer a fund established under this section. Money in the fund that is not currently needed for the purposes set forth in subsection (c) ~~may~~ **shall be deposited and** invested in the same manner as other county money ~~may be~~ **is deposited and** invested **under IC 5-13**. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a district's fiscal year does not revert to:

- (1) a county general fund; or
- (2) any other fund.

(e) The controller of a district shall:

- (1) file an individual surety bond; or
- (2) revise an existing bond;

in a sufficient amount determined under IC 5-4-1-18 to reflect the liability associated with the handling of the district's money.

SECTION 5. IC 20-26-5-22.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 22.5. (a) A school corporation may participate in the establishment of a public school foundation.**

**(b) The governing body of a school corporation may receive the proceeds of a grant, a restricted gift, an unrestricted gift, a donation, an endowment, a bequest, a trust, an agreement to share**

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tax revenue received by a city or county under IC 4-33-12-6 or IC 4-33-13, or other funds not generated from taxes levied by the school corporation to create a foundation under the following conditions:

**(1) The foundation is:**

**(A) exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and**

**(B) organized as an Indiana nonprofit corporation for the purposes of providing educational funds for scholarships, teacher education, capital programs, and special programs for school corporations.**

**(2) Except as provided in subdivision (3), the foundation retains all rights to a donation, including investment powers. The foundation may hold a donation as a permanent endowment.**

**(3) The foundation agrees to do the following:**

**(A) Distribute the income from a donation only to the school corporation.**

**(B) Return a donation to the general fund of the school corporation if the foundation:**

**(i) loses the foundation's status as a foundation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;**

**(ii) is liquidated; or**

**(iii) violates any condition set forth in this subdivision.**

**(c) A school corporation may use the proceeds received under this section from a foundation only for purposes of the school corporation.**

**(d) The governing body of the school corporation may appoint members to the foundation.**

**(e) The treasurer of the governing body of the school corporation may serve as the treasurer of the foundation."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1097 as reprinted January 25, 2005.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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